

AMENDED IN SENATE AUGUST 26, 2009

AMENDED IN SENATE JUNE 30, 2009

AMENDED IN SENATE JUNE 11, 2009

AMENDED IN ASSEMBLY MAY 6, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 471

Introduced by Assembly Member Nava

February 24, 2009

An act to amend Sections 11040 and 11042 of, and to add Sections 11042.1, 11042.2, 11042.3, and 11046 to, the Government Code, *and to amend Section 1341.6 of the Health and Safety Code*, relating to legal services.

LEGISLATIVE COUNSEL'S DIGEST

AB 471, as amended, Nava. Legal services.

Existing law requires certain state entities to obtain written consent from the Attorney General before employing legal counsel in any judicial proceeding. *Existing law exempts from those requirements certain state entities.*

This bill would recast these provisions, define terms for their purposes, and state several factors the Attorney General may consider when considering consenting to a state agency, commissioner, or officer employing in-house counsel or outside counsel, as defined. *The bill would make other conforming changes.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 11040 of the Government Code is amended to read:

11040. (a) This article does not affect the right of any state agency or employee to employ counsel in any matter of the state, after first having obtained the written consent of the Attorney General.

(b) It is the intent of the Legislature that overall efficiency and economy in state government be enhanced by employment of the Attorney General as counsel for the representation of state agencies and employees in judicial or other proceedings.

The Legislature finds that it is in the best interests of the people of the State of California that the Attorney General be provided with the resources needed to develop and maintain the Attorney General's capability to provide competent legal representation of state agencies and employees in any judicial proceeding.

(c) Except with respect to employment by the state officers and agencies specified by title or name in Section 11041 or when specifically waived, *exempted*, or *excepted* by statute other than Section 11041, the written consent of the Attorney General is required prior to employment of outside counsel for representation of any state agency or employee.

SEC. 2. Section 11042 of the Government Code is amended to read:

11042. A state agency, commissioner, or officer may employ in-house counsel to provide legal services. However, except as otherwise specifically provided in this article or another statute, only the Attorney General, or one of his or her assistants or deputies, shall represent a state agency, commissioner, or officer in relation to a judicial or other proceeding in which the agency, commissioner, or officer is interested, or is a party as a result of office or official duties, unless express written consent is given by the Attorney General to employ in-house counsel.

SEC. 3. Section 11042.1 is added to the Government Code, to read:

11042.1. Nothing in this article prohibits a state agency, commissioner, or officer from obtaining legal services from the Attorney General that are unrelated to a judicial or other proceeding.

1 SEC. 4. Section 11042.2 is added to the Government Code, to
2 read:

3 11042.2. When the Attorney General consents to a state agency,
4 commissioner, or officer employing in-house counsel or outside
5 counsel in a judicial or other proceeding, the Attorney General
6 may intervene in the proceeding or appear as amicus curiae to the
7 extent permitted by the court.

8 SEC. 5. Section 11042.3 is added to the Government Code, to
9 read:

10 11042.3. In determining whether to give consent to a state
11 agency, commissioner, or officer to employ in-house counsel or
12 outside counsel in a judicial or other proceeding, and the extent
13 of such consent, the Attorney General may consider the factors of
14 conflicts of interest, the staffing needs of the Office of the Attorney
15 General, and the availability of subject matter expertise.

16 SEC. 6. Section 11046 is added to the Government Code, to
17 read:

18 11046. For purposes of this article and unless otherwise
19 specifically stated, the following definitions shall apply:

20 (a) “In-house counsel” means a licensed attorney employed in
21 state service by a state agency, commissioner, or officer.

22 (b) “Judicial or other proceeding” means litigation in a civil
23 court, an administrative adjudicatory proceeding governed by the
24 Administrative Procedure Act (Chapter 4 (commencing with
25 Section 11370)) or by the United States Administrative Procedure
26 Act (5 U.S.C. ~~551~~, Sec. 551 et seq.), or an arbitration proceeding.
27 Administrative adjudicatory proceedings before the State Personnel
28 Board, the Department of Personnel Administration, or the
29 Unemployment Insurance Appeals Board are exempt from this
30 definition.

31 (c) “Outside counsel” means a licensed attorney engaged in the
32 private practice of law.

33 SEC. 7. Section 1341.6 of the Health and Safety Code is
34 amended to read:

35 1341.6. (a) The Attorney General shall render to the director
36 opinions upon all questions of law, relating to the construction or
37 interpretation of any law under the director’s jurisdiction or arising
38 in the administration thereof, that may be submitted to the Attorney
39 General by the director and upon the director’s request shall act
40 as the attorney for the director in actions and proceedings brought

1 by or against the director under or pursuant to any provision of
2 any law under the director's jurisdiction.
3 (b) Sections ~~11041~~, 11042, *11042.1*, *11042.2*, *11042.3*, and
4 11043 of the Government Code do not apply to the Director of the
5 Department of Managed Health Care *or to the Department of*
6 *Managed Health Care*.